

BERYL J. AND BEATRICE M. STRONG

IBLA 89-643

Decided December 3, 1991

Appeal from a decision of the Arizona State Office, Bureau of Land Management, denying petition for deferment of annual assessment work (A 23984) for 43 lode mining claims (A MC 59751-61, A MC 59766-93, and A MC 65651-54).

Affirmed.

1. Mining Claims: Generally--Mining Claims: Assessment Work

In accordance with 43 CFR 3852.2(a), a petition for deferment of assessment work must be signed by at least one of the owners of each claim involved. Where BLM records do not show the petitioners as the owners of the claims, BLM may not approve a petition for deferment of assessment work even though the petitioners claim to be the owners of the mining claims. Jurisdiction over disputes between rival mining claimants is reserved to the courts.

2. Mining Claims: Generally--Mining Claims: Assessment Work

A petition for the deferment of assessment work may only be granted pursuant to 30 U.S.C. § 28b (1988) where "legal impediments" exist which affect the right of the mining claimant to enter upon the land or gain access to the boundaries thereof. Pending litigation to establish ownership of mining claims is not, in itself, such a legal impediment to access.

APPEARANCES: Beryl J. and Beatrice M. Strong, pro sese.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Beryl J. and Beatrice M. Strong have appealed from a July 27, 1989, decision of the Arizona State Office, Bureau of Land Management (BLM),

denying their petition for deferment of annual assessment (A 23984) for 43 lode mining claims (A MC 59751-61, A MC 59766-93, and A MC 65651-54) situated in sec. 31, T. 4 S., R. 18 W., sec. 36, T. 4 S., R. 19 W., secs. 1 and 6, T. 5 S., R. 18 W., and sec. 1, T. 5 S., R. 19 W., Gila & Salt River Basin & Meridian, Yuma County, Arizona.

BLM records indicate that on August 31 and September 25, 1979, Dome Ventures, an Arizona Limited Partnership, filed copies of the mining claim location notices for the 43 claims with BLM in accordance with section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1988). ^{1/} BLM records also disclose that the required affidavits of annual assessment work for the claims have been filed each year by Dome Ventures or its agents.

On July 24, 1989, the Strongs filed their petition requesting deferment of annual assessment work for up to 1 year beginning on June 19, 1989. The Strongs declared that they were the owners of the 43 mining claims and that they sought the deferment to allow them to initiate litigation to "ter-minat[e] the interest of persons presently recognized by [BLM] as claimants or having interest in or a lien or encumbrance upon, and to quiet title to said property in the name of Strong." They also asserted that, on March 19, 1989, their associates "were verbally denied access" to the mining claims.

In its July 27, 1989, decision, BLM found that the petition for deferment failed to meet the requirements set out in 43 CFR 3852.2 and, therefore, denied the petition. BLM noted that the regulations require that the petition be signed by at least one of the owners of the involved claims. Since its records did not show the Strongs as owners of the subject mining claims, BLM determined that it was precluded from considering the petition for deferment. BLM also rejected the reasons the Strongs gave for requesting deferment of annual assessment work, concluding that "[i]f the petition for deferment is based on legal impediments; i.e. litigation; the litigation must be ongoing. Deferment of annual assessment work cannot be granted to 'initiate' litigation to prove ownership nor settle a dispute because a nonowner was denied access to the affected mining claims" (Decision at 1, emphasis in original).

On appeal the Strongs maintain that they are the owners of the 43 affected mining claims, asserting that they obtained ownership of the claims through notices of location and quit claim deeds, copies of which they submitted to BLM via letter received by BLM on May 1, 1989. They explain that they entered into an option agreement with Dome Venture's predecessor in interest to sell 39 of the claims, ^{2/} but that, although the option was exercised, the transfer has not been completed due to Dome Venture's failure to pay all of the agreed upon purchase price for the

^{1/} These claims were located between 1953 and 1973.

^{2/} The option agreement actually lists 40 claims.

claims. The Strongs note that litigation has been initiated to quiet title to these claims. As to the remaining three affected claims (A MC 59759-61), the Strongs contend that, even though these claims were not part of the option agreement and Dome Ventures does not claim ownership of them, BLM records erroneously show Dome Ventures as the owner of these claims. ^{3/} The Strongs also argue that, since the litigation over title to the claims is ongoing, their petition for deferment is based on a legal impediment and should be granted.

[1] Under 30 U.S.C. § 28 (1988), a minimum of \$100 worth of labor must be performed or improvements made on a mining claim every year after location of the claim and prior to patent thereof. See also 43 CFR 3851.1. Failure to perform the required labor or make the improvements renders the claim subject to loss by relocation of the claim by another party, or, if the land is subsequently withdrawn from entry, a failure to substantially comply with the assessment work requirement may lead to forfeiture of the claim to the United States. 30 U.S.C. § 28 (1988); 43 CFR 3851.3(b); see Lyra-Vega II Mining Association, 91 IBLA 378, 381 (1986), and cases cited therein. ^{4/}

The statute, however, also provides for the temporary deferment of the annual assessment work under certain limited circumstances:

The performance of not less than \$100 worth of labor or the making of improvements aggregating such amount, which labor or improvements are required under the provisions of section 28 of this title to be made during each year, may be deferred by the Secretary of the Interior as to any mining claim or group of claims in the United States upon the submission by the claimant of evidence satisfactory to the Secretary that such mining claim or group of claims is surrounded by lands over which a right-of-way for the performance of such assessment work has been denied or is in litigation or is in the process of acquisition under State law or that other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof.

30 U.S.C. § 28b (1988); see 43 CFR 3852.1.

^{3/} According to BLM records, Dome Ventures filed the location notices for these three claims in August 1979, and has filed the affidavits of annual assessment work for the claims since that time. If Dome Ventures had not made those filings, the three claims would have been deemed abandoned under 43 U.S.C. § 1744(c) (1988).

^{4/} A claimant is also required to file prior to December 31 of each year either a formal notice of intention to hold the mining claim or an affidavit of assessment work performed thereon. 43 U.S.C. § 1744(a) (1988); 43 CFR 3833.2-1. Failure to file such instruments "shall be deemed

The implementing regulations require that a petition for the deferment of annual assessment work be signed by at least one of the owners of each location involved. 43 CFR 3852.2(a). BLM records do not show the Strongs as owners of any of the 43 affected mining claims: all filing for these claims have been made by or on behalf of Dome Ventures as an entity or its individual partners. Although the Strongs maintain that they own all of the claims as evidenced by the copies of location notices, sales contracts, and quit claim deeds they submitted to BLM in May 1989, jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide which claimant has a better right to a claim. Rufus B. McIlroy, 111 IBLA 144, 146 (1989), and cases cited therein. Litigation over title to the claims is presently occurring in an Arizona state court, and BLM's denial of the petition effectively maintains the status quo until that litigation concludes. Cf. Ernhart, Inc., 108 IBLA 267, 269-70 (1989) (Department will take no action on an assignment of an oil and gas lease and will preserve the status quo until the parties resolve their differences). Thus, BLM properly refused to grant the Strongs' petition for deferment of annual assessment work. 5/

[2] Even if the Strongs were the owners of the 43 affected mining claims, their petition for deferment of annual assessment work would properly have been denied. 6/ The purpose of 30 U.S.C. § 28b (1988) is to protect a claimant whose right of access to his mining claim has been denied or impeded. John W. MacGuire, 35 IBLA 117, 118 (1978). To satisfy the statutory requirements, a claimant must show conditions exist which restrict or thwart the right of access to the claim. David Doremus, 115 IBLA 336, 339 (1990); Lyra-Vega II Mining Association, supra at 381. The Board has emphasized that a deferment may only be granted where "legal impediments" exist which affect the right of the claimant to enter upon the surface of the claims, and physical access to the claims has been prevented. David Doremus, supra, and cases cited therein.

The Strongs contend that the pending litigation over the ownership of the claims constitutes a legal impediment warranting the granting of their petition for deferral of assessment work. This Board has held, however, that "[p]ending litigation to establish ownership of mining claims is not * * * in itself a legal impediment to access." Wheaton D. Blanchard, 112 IBLA 261, 265 (1990); see also Lyra-Vega II Mining Association, supra at 382, and cases cited therein. Although an injunction against entry will support a deferment, Wheaton D. Blanchard, supra, no such injunction

fn. 4 (continued)

conclusively to constitute an abandonment of the mining claim." 43 U.S.C. § 1744(c) (1988); 43 CFR 3833.4. We note that the Strongs filed a notice of intention to hold the mining claims with their appeal.

5/ The Strongs may preserve the claims by filing with BLM annual notices of intention to hold the claims even though they are not currently record owners of the claims.

6/ Thus, we need not consider separately the three claims over which there is no title dispute.

has been issued here. 7/ Thus the proceedings in the state court are not a legal bar to the performance of the required annual assessment work. 8/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge

7/ A temporary restraining order has been issued in the pending state court action enjoining the Strongs from enforcing or seeking to enforce any forfeiture by notice of the disputed mining claims. That order does not affect access to the claims.

8/ Although, on appeal, the Strongs have not elaborated upon the assertion in their petition that their associates were verbally denied access to the claims, we note that this Board has found that threats of violence or physical danger posed by rival claimants are not relevant to petitions for deferment because such activity does not constitute a legal impediment to access. Wheaton D. Blanchard, supra at 265; Don Hesselgesser, 39 IBLA 75, 77 (1979).